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DAVID I. ROCHE BAKER & MCKENZIE LLP 130 EAST RANDOLPH DRIVE CHICAGO, IL 60601			EXAMINER CHOI, JACOB Y	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL S. CHOI,
ADRIAN A. BRUNO, JON ALLING,
ERIC SUGALSKI and MICHAEL PELLAND

Appeal 2008-1671
Application 10/603,568
Technology Center 2800

Decided: April 21, 2008

Before EDWARD C. KIMLIN, PETER F. KRATZ, and KAREN M.
HASTINGS, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-13, and 15-30.
Claim 1 is illustrative:

1. In a barbecue grill an upper member and a lower member defining a cooking chamber, the cooking chamber having a cooking grid, the upper member being hingedly secured to the lower member, the upper member

covering the lower member in a closed position, the improvement comprising a light, wherein the light comprises:

a fixture having a first mating member, the fixture being fabricated to be secured to the barbeque grill;

a removable first pod having an illumination device and a second mating member, the second mating member of the first pod removably engaging the first mating member of the fixture to removably secure the first pod to the fixture.

The Examiner relies upon the following references as evidence of obviousness:

Shoji	5,378,553	Jan. 3, 1995
Sutherland	5,641,220	Jun. 24, 1997
Grisamore	6,132,055	Oct. 17, 2000
Petzl	6,499,859 B2	Dec. 31, 2002

Appellants' claimed invention is directed to a barbeque grill having a light fixture attached thereto, e.g., at the handle of the grill's upper member which is hingedly secured to the lower member of the grill. A removal pod containing the light has a mating member that engages a mating member of the fixture that is secured to the handle.

The appealed claims stand rejected under 35 U.S.C. § 103(a) as follows:

- (a) claims 1, 6-8 and 10-12 over Shoji in view of Grisamore,
- (b) claims 2, 9 and 13 over Shoji in view of Grisamore and Petzl,
- (c) claims 3-5 over Shoji in view of Grisamore and Sutherland,

(d) claims 15-18, 21, and 22-26 over Shoji in view of Grisamore and Petzl,

(e) claims 19 and 20 over Shoji in view of Grisamore, Petzl, and Sutherland, and,

(f) claims 17-29 over Shoji in view of Grisamore, Petzl, and Sutherland.

Appellants set forth separate arguments for claims 3, 4 and 19, 5 and 20, as well as 15 and 27. Appellants do not separately argue claims 2, 6-13, 16-18, 21-26, and 28-30 which, therefore, stand or fall together with the independent claims upon which they ultimately depend.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the Answer, which we incorporate herein, and we add the following primarily for emphasis.

There is no dispute that Grisamore, like Appellants, discloses a barbeque grill having a fixture that provides light illuminating from the handle portion of the grill's upper lid. Unlike the modular device of appellants, the light of Grisamore is integral with the handle itself to eliminate the cumbersome, awkward, and expensive aspects of lights that are attached to the grill or a surrounding structure (*see* col. 1, ll. 1-20).

However, we fully concur with the Examiner that Shoji evidences the

obviousness of providing a modular fixture comprising a removable pod to the handle portion of an apparatus or device. While Shoji, as emphasized by Appellants, is directed to the handle of a bicycle, we have no doubt that one of ordinary skill in the art would have found it obvious to employ the light fixture of Shoji on any device or apparatus which comprises a structure similar in configuration to "a handle or the like of a bicycle" (Shoji, col. 3, l. 9). We note that Appellants have not established any patentable distinction between the structure of Shoji's light fixture and ones within the scope of the appealed claims. In our view, it would have been a matter of obviousness for one of ordinary skill in the art to attach Shoji's light fixture to any apparatus or device that comprises a structure similar to a bike handle or the like where the benefit of illuminating light would have been readily appreciated. That Grisamore teaches that it was known in the art to provide an illuminating light on the handle of a grill underscores the obviousness of utilizing a light fixture of the type disclosed by Shoji on the handle of a barbeque grill.

We do not subscribe to a principal argument advanced by Appellants with respect to the non-analogous nature of Shoji. From our perspective, the Examiner properly reasoned that Shoji is reasonably pertinent to the problem confronting Grisamore and Appellants, namely, illuminating a barbeque grill, particularly from the handle area of the grill. Faced with such a problem, we are satisfied that one of ordinary skill in the art would have reasonably pursued the prior art relating to light fixtures attached to a handle or similar cylindrical or rod-like structure. While Appellants have cited

various precedential cases from our reviewing Court wherein prior art was found to be non-analogous, it is well settled that each particular case stands or falls on its own facts, and the predecessor Court to our current reviewing Court has stated that fundamental mechanical concepts transcend many arts. *In re Antle*, 444 F2d 1168(CCPA 1971). Also, see *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007) wherein the Supreme Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740.

Here, we are convinced that the facts of record support the Examiner's conclusion that Shoji is analogous art that may be properly combined with Grisamore and the other applied prior art.

Appellants argue that "barbeque grill handles are substantially different from bicycle handles in both structure, function, and use" (Principal Br. 13, first para.), and that "bicycle handles are attached to bicycles at a pivot point, wherein the axis about which the bicycle handle rotates is *perpendicular* to the longitudinal axis of the handle" (Principal Br. 13,

second para.). However, Appellants fail to explain how this asserted difference in the function, structure and use would have militated against one of ordinary skill in the art utilizing a modular fixture essentially the same as Shoji's on the barbeque grill handle of Grisamore. To be sure, one of ordinary skill in the art would have had the wherewithal to make the necessary modifications to Shoji's fixture to accommodate the particular shape of a grill's handle.

We also reject Appellants' argument that Grisamore's teaching of the disadvantages of attaching a light to a barbeque grill is tantamount to the sort of "teaching away" that is evidence of nonobviousness. Certainly, skill in the art is presumed and we find that one of ordinary skill in the art would have found it obvious to weigh the advantages and disadvantages of using a light that is integral with or attached to the handle of a barbeque grill.¹ Just as it is obvious for one of ordinary skill in the art to eliminate a feature of the prior art along with its attendant advantage, it also is obvious to employ a feature of the prior art along with its known disadvantage. *See In re Thompson*, 545 F.2d 1290, 1294 (CCPA 1976); *In re Kuhle*, 526 F.2d 553, 555 (CCPA 1975); *In re Marzocchi*, 456 F.2d 790, 793 (CCPA 1972); *In re Porter*, 68 F.2d 971, 973 (CCPA 1934).

¹ *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown.’”). Also, it is well settled that “[t]he person of ordinary skill in the art is a hypothetical person who is presumed to know the relevant prior art. *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986).

Concerning the rejection of claims 3-5, 19-20 and 27-29 over the additional disclosure of Sutherland, we find that one of ordinary skill in the art would have found it obvious to employ more than one light fixture of the type disclosed by Shoji on the handle of a barbeque grill. While we find no error in the Examiner's citation of Sutherland for the obviousness of using a plurality of lights on a structure similar to the handle of a grill, we hardly find Sutherland necessary for establishing the obviousness of modifying the structure of Shoji to accommodate more than one light. While we do not agree with the Examiner that claim 3 does not set forth a single fixture having a plurality of mating members, we find that it would have been obvious for one of ordinary skill in the art to extend the basic structure of Shoji's design to provide securement to more than one source of light. Likewise, although we disagree with the Examiner that the handle bar of Sutherland corresponds to the claim 5 recitation of "the fixture has a handle portion between the first pod and the second pod," we find that it would have been obvious for one of ordinary skill in the art to provide such a handle connecting Sutherlands plurality of light fixtures or to expand the basic design of Shoji's light fixture to provide for a plurality of lights. It should be borne in mind that it is not necessary for a finding of obviousness that the applied prior art provide precise teachings directed to specific claimed features since the inferences and creative steps a person of ordinary skill in the art would have employed must be considered. *KSR*, 127 S. Ct. at 1740. In the present case, we find that the claimed subject matter amounts

to a combination of known, familiar elements that produces no more than expected, predictable results. *Id.* at 1739.

As for the claim 4 requirement that the first and second pods have first and second internal power sources and switches, respectively, we have no doubt that it would have been obvious for one of ordinary skill in the art to employ either a single power source or separate power sources (batteries) for the two pods. Appellants have advanced no argument which explains why such would not have been obvious to one of ordinary skill in the art.

As a final point, we note that Appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied prior art.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(effective Sept. 13, 2004).

AFFIRMED

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Application 10/603,568

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